

Doc Code: AP.PRE.REQ



PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

Approved for use through 09/30/2008. GPO: 2007-09-08

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>															
Docket Number 05859.0026-00000															
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>															
<table border="1"> <tr> <td style="width: 50%;">Application Number</td> <td style="width: 50%;">Filed</td> </tr> <tr> <td>10/761,214</td> <td>January 22, 2004</td> </tr> <tr> <td colspan="2">First Named Inventor</td> </tr> <tr> <td colspan="2">Ernesto GAMBERINI</td> </tr> <tr> <td colspan="2"> <table border="1"> <tr> <td style="width: 50%;">Art Unit</td> <td style="width: 50%;">Examiner</td> </tr> <tr> <td>3651</td> <td>R. Sharma</td> </tr> </table> </td> </tr> </table>		Application Number	Filed	10/761,214	January 22, 2004	First Named Inventor		Ernesto GAMBERINI		<table border="1"> <tr> <td style="width: 50%;">Art Unit</td> <td style="width: 50%;">Examiner</td> </tr> <tr> <td>3651</td> <td>R. Sharma</td> </tr> </table>		Art Unit	Examiner	3651	R. Sharma
Application Number	Filed														
10/761,214	January 22, 2004														
First Named Inventor															
Ernesto GAMBERINI															
<table border="1"> <tr> <td style="width: 50%;">Art Unit</td> <td style="width: 50%;">Examiner</td> </tr> <tr> <td>3651</td> <td>R. Sharma</td> </tr> </table>		Art Unit	Examiner	3651	R. Sharma										
Art Unit	Examiner														
3651	R. Sharma														

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

**This request is being filed with a Notice of Appeal.**

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

attorney or agent of record

attorney or agent of record.

(203) 408-4120

(202) 406-4129

attorney or agent acting under 37 C.F.R. 1.34

December 11, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

\*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.**



PATENT  
Customer No. 22,852  
Attorney Docket No. 05859.0026-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Ernesto GAMBERINI ) Group Art Unit: 3651  
Application No. 10/761,214 ) Examiner: R. Sharma  
Filed: January 22, 2004 ) Confirmation No.: 2749  
For: UNIT FOR FEEDING CAPSULES )  
ONTO A CAPSULE FILLING )  
MACHINE )

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant requests a pre-appeal brief review of the rejections set forth in the final Office Action mailed September 1, 2006. This request is being filed concurrently with a Notice of Appeal.

**1. Requirements for Submitting a Pre-Appeal Brief Request for Review**

Applicant respectfully asserts that (1) the application has been at least twice rejected; (2) this request is being filed concurrently with a Notice of Appeal; (3) this request is being filed prior to an Appeal Brief; and (4) this request is five or less pages in length, all in accordance with the guidelines set forth in the Official Gazette Notice of July 12, 2005. Applicant has met each of these requirements and therefore requests

review of the Examiner's rejections in the final Office Action for the following reasons:

Initial date 12/12/2006 JADD01 250.00 00.00  
02 FEB 2006 JADD01 250.00 00.00  
02 FEB 2006 JADD01 250.00 00.00  
02 FEB 2492

**2. Independent Claim 1 is Not Unpatentable Over U.S. Patent No. 6,168,045 to Ansaloni ("Ansaloni") in View of U.S. Patent No. 6,405,894 to Leather ("Leather")**

Claim 1 recites a unit for feeding capsules onto a machine for filling capsules including, among other things, a hopper having a first axis of rotation and fitted with feed channels that each have a longitudinal second axis. Claim 1 further recites "each feed channel being positioned such that said second axis forms an angle of other than 90° with a reference plane perpendicular to said first axis." Ansaloni and Leather do not disclose or suggest at least this aspect of the invention.

Ansaloni discloses a hopper 10 storing bottom shells 2 and having a number of tubular sleeves 16 that receive the bottom shells 2 successively from the hopper 10 (Ansaloni, col. 2, ll. 59-67). The tubular sleeves 16 each have an axis A that extends parallel to an axis of rotation X of the hopper 10 (Ansaloni, Figs. 1-2 and col. 2, ll. 45-46, and col. 3, ll. 6-7). The axes A of the tubular sleeves 16 each form an angle of 90° with a reference plane perpendicular to the axis X of the hopper 10. Therefore, Ansaloni does not disclose or suggest that the longitudinal second axis of each feed channel forms an angle of other than 90° with a reference plane perpendicular to the axis of rotation of the hopper, as set forth in claim 1. Some advantages of orienting the second axis with respect to the first axis as set forth in the claim are described in the specification, for example, on p. 6, ll. 17-26, and p. 11, ll. 20-25, of the specification.

Leather also does not disclose or suggest this feature. Leather discloses an object assembly device 10 that automatically assembles rolling objects, such as bearings, golf balls, etc. (Leather, col. 4, ll. 2-5). The device 10 includes a hopper 12 including a cylindrical upper body portion 15 and a conical lower body portion 17

(Leather, col. 4, ll. 8-13). A collection of rolling objects is poured into the hopper 12, directed along a helical groove 52 “in continuous single-line succession,” and then directed outwardly from the hopper 12 (Leather, col. 5, ll. 39-43, 50-54). Leather’s hopper 12 is mounted using a mounting flange 19 to a support stand 14 using screws, rivets, or other means (Leather, col. 4, ll. 8-10 and 13-19). Thus, Leather’s hopper does not rotate and does not have an axis of rotation, as set forth in claim 1. Furthermore, Leather’s helical groove 52 is a single groove that “extends substantially 360 degrees from a top of the feed cone 51 to the bottom” (Leather, col. 4, ll. 61-63). The helical groove 52 does not have a longitudinal axis. Thus, Leather’s helical groove does not have a longitudinal axis that forms an angle other than 90° with reference to a plane perpendicular to a hopper’s axis of rotation, since Leather’s hopper does not have an axis of rotation and Leather’s helical groove does not have a longitudinal axis.

The Office Actions of March 23 and September 1, 2006, state, with respect to claim 1, that Ansaloni fails to disclose “a truncated, conical hopper” and that “Leather does disclose a truncated, conical hopper.” Office Action mailed September 1, 2006, p. 3. Although claims 8 and 9 recite transfer wheels having “substantially truncated-cone-shaped” outer peripheral surfaces, claim 1 does not recite or require a truncated, conical shape. A hopper having feed channels positioned such that the axes of the feed channels each form an angle of other than 90° with a reference plane perpendicular to the hopper’s axis of rotation, as recited in claim 1, is not the same as a “truncated, conical hopper” since the orientation of the hopper’s axis of rotation with respect to the axes of each feed channel is independent of the shape of the hopper.

Moreover, there is no motivation to modify Ansaloni's hopper in view of Leather's hopper since Leather discloses a single groove. Thus, Leather teaches away from providing "a number of feed channels... each feed channel having a longitudinal second axis... such that said second axis forms an angle of other than 90° with a reference plane perpendicular to [the hopper's axis of rotation]," as set forth in claim 1. If Ansaloni's hopper were modified to include the helical groove of Leather's hopper, Ansaloni's hopper would include a single tubular sleeve extending substantially 360 degrees from the top to the bottom of the feed cone 51. Therefore, there is no motivation to modify Ansaloni's hopper in view of Leather's hopper, and even if one were to combine the two references, the combination would not produce the recited invention as set forth in claim 1.

Claims 2-12 are allowable at least due to their dependency from independent claim 1. In addition, each of claims 2-12 recites unique combinations that are neither taught nor suggested by the cited art, and therefore each is also separately patentable. For example, the Office Actions of March 23, 2006, and September 1, 2006, contend that Ansaloni discloses "a number of supporting bars connected to said hopper and each supporting bar having at least two of said feed channels," as set forth in claim 4. The Office Actions contend that Ansaloni's rods 27 are supporting bars and that the tubular sleeves 16 are feed channels. However, as stated in the Reply to Office Action filed on June 21, 2006, Ansaloni's rods 27 are solid and do not include any channels, and Ansaloni's tubular sleeves 16 include only a single channel, as shown in Fig. 3.

**3. Claim 9 is Not Unpatentable Over Ansaloni in View of Leather and U.S. Patent No. 5,966,910 to Ribani et al. ("Ribani")**

Claim 9 is allowable at least due to its dependence from independent claim 1. Ansaloni and Leather do not disclose or suggest all of the limitations of claim 1 as stated above, and Ribani does not cure the deficiencies of Ansaloni and Leather with regard to claim 1. Ribani discloses a machine for packaging tablets including a magazine 15 that stores capsule bases 14 (Ribani, col. 2, ll. 49-50). The bases 14 pass through apertures in the magazine 15 through vertical tubes 17 (Ribani, col. 2, ll. 49-53). However, the magazine 15 does not rotate. Therefore, Ribani does not disclose or suggest a first axis of rotation for a hopper, as set forth in claim 1. Ribani also does not disclose or suggest that a longitudinal axis of the vertical tubes 17 forms an angle other than 90° with reference to a plane perpendicular to an axis of rotation.

**4. Conclusion**

Since the Examiner's rejection of claims 1-12 includes factual and legal deficiencies with regard to 35 U.S.C. § 103(a) and the MPEP, Applicant is entitled to a pre-appeal brief review of the final Office Action. Based on the foregoing arguments, and the arguments from the Reply to Office Action filed on June 21, 2006, Applicant requests that the rejection of these claims be withdrawn and the claims allowed.

Please grant any extensions of time required to enter this response and charge  
any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: December 11, 2006

By: Elizabeth M. Bunker, Reg. No. 38,758  
for Denise L. Poy  
Reg. No. 53,480